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Filed April 30, 1900

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 307.

WILLIAM HENRY BALDWIN, ETAL, PLAINTIFFS IN ERROR,

vs.

STATE OF MARYLAND, USE OF H. FRANK HULL, COLLECTOR, &c.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF

On Motion to Dismiss for Want of Jurisdiction.

H. L. RIED DOUGLAS,

Counsel for Defendant in Error.

MAIL PUBLISHING CO., PRINTERS, HAGERSTOWN, MD.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 367.

WILLIAM HENRY BALDWIN, ET AL, PLAINTIFF IN ERROR.

vs.

STATE OF MARYLAND, USE OF D. FRANK HULL, COLLECTOR, &c

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF

OF DEFENDANT IN ERROR.

ON MOTION TO DISMISS FOR WANT OF JURISDICTION.

In November, 1879, Christopher C. Baldwin was appointed guardian of Columbus C. Baldwin by the Orphans Court of Washington County, Maryland. He received, as guardian, large sums of money as his ward's distributive share of the estates of James Dixon Roman, the ward's grandfather, and Louisa M. Roman, his grandmother, both of whom lived and died in Washington County, where their estates were settled in the same Orphans' Court. Christopher C. Baldwin settled his

guardian accounts regularly in that Court up to 1884, when he resigned and was succeeded by R. W. Baldwin, who settled six accounts and then died. W. W. Baldwin was appointed guardian in place of the deceased in 1891, and settled a number of accounts. He, like his predecessor, Christopher and the ward Columbus, was and is a resident of New York City, and the ward became of age there in 1893. During the years mentioned the Register of Wills of Washington County, Maryland, made the annual returns he is required to make to the County Commissioners, taxes were levied against the estate in hands of said guardians, upon these returns, and duly paid up to the year 1893 The property taxed consisted of stocks and bonds of corporations located outside of the State of Maryland.

This guardian settled no account after 1892 until Feb. 15, 1895, when he settled his 2nd account, showing a balance due his ward of $63,381.56, but still did not settle a final account.

On February 12, 1895, the said W. W. Baldwin, as guardian, filed a bill in the Circuit Court for Washington County, Maryland, on the Equity side seeking to restrain the collection of the taxes for 1893 and 1894, then due. Upon hearing, the judgment of the Circuit Court was against him, this Bill was dismissed. He appealed to the Court of Appeals of Maryland and the judgment of the Circuit Court was affirmed. He took the case up on *writ of error* to the Supreme Court of the United States (No. 370 October Term, 1897) and the writ of error was dismissed for want of jurisdiction.

This reasonable termination of the case did not terminate it. The guardian would not pay the taxes, nor would he come within the jurisdiction of our Circuit Court. His bondsmen, the plaintiffs in error (those living) refused to pay and the Collector of taxes was com-

pelled to pursue them by suit in Baltimere City, including in his suit the additional taxes for 1895, which were in the same position. Before he could obtain a simple judgment against the guardian's bond for taxes, decreed by the highest court in the State to be due and collectable, the defendant in error was obliged to contend against 27 pleas, 23 additional pleas, 15 prayers, 5 bills of exceptions and 1 motion in arrest of judgment; the attorneys for the Baldwins evidently forgetting that Methuselah's longevity and Job's patience had not survived to these days. Little wonder that the Court of Appeals of Maryland, with a tired feeling, says in its opinion—"Fortunately it does not often occur (we know of no such case in this State at least) that a guardian after going into Court for the purpose of testing the validity of taxes imposed upon property in his hands, and after the question is settled against his contention by the Appellate Court of the State, will still undertake to avoid the payment of them."

But the State obtained judgment, at last, in the Superior Court of Baltimore City, it taking one year and two months to get it The defendants again took the case to the Court of Appeals, which speedily disposed of it by affirming the judgment below. With an indomitable perseverance worthy of a better cause the same case, virtually, is in this Honorable Court again, and again the defendant in error moves to dismiss it for want of jurisdiction.

It is the same case. There is an attempt on the part of the real Plaintiff in error to cover his hand so as to resemble that of the ingenous Esau, but his voice is that of the same old tax-dodging Jacob. The modern judicial Abraham is not, however, so easily fooled!

POINTS.

The defendant in error, upon the motion to dismiss, submits.

1. That no Federal question was presented for decision to the Courts below which had not previously been determined in the same case.

2. That no Federal question was involved.

3. That the discussion of no Federal question was necessary to the determination of the case.

4. That no Federal question was decided or considered by the State Courts, but this case was determined and considered upon other and different grounds.

5. That any question of real contention had already been determined and considered by the Court of Appeals of Maryland in the same case previously (Baldwin vs. Washington County 85, Md., 145) from which this Court has said there was no appeal and that the time has arrived when there should be an end of such litigation.

An examination of the opinion of the Court of Appeals delivered by Judge Boyd who also delivered the opinion of the Court in Baldwin vs Washington County, (85 Md. 145) will show what was considered by that Court as the questions necessary to decide the whole case not withstanding the half-hundred pleas and fifteen prayers of the plaintiffs in error.

After referring to and reaffirming their opinion in Baldwin vs. Washington County, in which they had decided (a) that the property in the hands of the guardian, (stocks and bonds) were for the purposes of taxation located in Washington County; (b) that the fact that the guardian and ward were non-residents of the State did not relieve the guardian from the payment of taxes; and (c) the fact that the taxes were levied after the ward became of age—no final account having been settled in

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the Orphans' Court—did not relieve him from their payment; the Court of Appeals proceeds to decide in this case

1. That the defendants, the sureties on the guardian's bond, are responsible for his failure to pay the taxes levied; (not a Federal question.)

2. That the suit on the bond was properly brought in the name of the State for the use of Hull, Collector; (not a Federal question.)

3. That the limitation to actions prescribed by Art. 81, Sec. 83 of the Code of Maryland cannot be applied to this suit; (no Federal question.)

4. "The only other question we need refer to is the constitutionality of the tax thus levied on the property. Having determined in the case of Baldwin vs. Washington County that the situs of the property was in that county, we do not propose to enter into an extended discussion of the constitutional questions attempted to be raised. We will, however, correct some erroneous conclusions that the counsel for the appellants seem to have reached in reference to our statutes."

* * * * * * *

"The property reported to the County Commissioners by the Register of Wills is only assessed, if not before assessed, and as we intimated in Baldwin vs. Washington County, the provision only applies to property that is taxable under the laws of the State. There is no discrimination whatever against infants or their guardians, but they are only bound to pay taxes as others do—no more, and, so far as the law can prevent it, no less. If the guardian attends to his duties there is no possible danger of any unjust assessment against his ward."

"We of course do not question the decisions of the Supreme Court of the United States, cited by the appellant as to the right of a State to tax property outside of

its limits when the owner is beyond its jurisdiction, but we do not deem them applicable to this case. In Baldwin vs. Washington County we held that the situs of this property was in that county and we have no reason to change the views therein expressed, &c."

It will be observed that the Court of Appeals of Maryland did not believe that any Federal question was involved in the case and did not determine any; further that, in their judgment all questions of importance had been considered and determined in the decision of Baldwin vs. Washington County, from which decision the Supreme Court has said there was no appeal and nothing to be reviewed by Writ of Error.

I

In fact the main question in dispute and in fact the whole one was *the construction of the statutes of Maryland* as to the duties and responsibilities of guardians and the taxation of personal property in their hands; ON THESE QUESTIONS THE DECISIONS OF STATE COURTS ARE NOT REVIEWABLE BY THE FEDERAL COURTS, EXCEPT UPON SPECIAL AUTHORITY.

Commercial Bank *vs.* Buckingham, 5 Howard 317.

Adams *vs.* Preston, 22 Howard 473.

Johnson *vs.* Risk, 137 U. S. 300.

De Saussure *vs.* Gaillard, 127 U. S 216.

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II

NO FEDERAL QUESTION WAS INVOLVED; NONE NECESSARY TO THE DETERMINATION OF THE CASE; NONE DECIDED IN THE STATE COURTS.

While the plaintiffs in error did at the trial of the case below in some of their numerous pleas and prayers, attempt, by interjecting the 14th Amendment to the Constitution, to raise a Federal question, yet none was really in the case nor considered by the Court; there was no occasion to do so. There was not an argument advanced nor a question raised, refering to the Federal Constitution that had not been discussed and exhausted in the case of Baldwin vs. Washington County, as will appear by reference to Mr. Boston's briefs before to Court of Appeals and the Supreme Court The Court of Appeals had determined it was not worth while to consider them; and the Supreme Court had dismissed the writ of error then because the matter was exclusively within the jurisdiction of the Courts of Maryland. There is not a shade of difference in this case except the former case was the front view, this the rear view of the same question

Baldwin *vs* Washington County, 85 Md. 145.

If, it has been judicially and finally determined—as it has been—by the Court of last resort in Maryland, that Baldwin, Guardian, is responsible for the taxes sued for and must pay them, and the Supreme Court of the United States has said—as it has—that the decision of the Maryland Court is final and beyond its jurisdiction to review, what possible question can arise when that Guardian's bond is sued in Maryland, that is not determinable in the Maryland Courts, or that can be taken to the Supreme Court and thus give it jurisdiction to review and reverse a former decision, which it had determined was beyond its reach?

For the same reasons and upon the same authorities used in the former case, we ask that this writ of error be dismissed.

Murdock *vs.* Memphis, 20 Wall 590.

Eustis *vs.* Boller, 150 U. S. 367.

Johnson *vs.* Risk, 137 U. S. 300.

Choteau *vs.* Sibson, 111 U. S. 200.

Oxlay Stave Co., 166 U. S. 648.

Leeper *vs.* Texas, 139 U. S. 467.

California Pow-ler &c. *vs.* Davis, 151 U, S. 393.

HY. KYD DOUGLAS,
For Defendant in Error.